

REPORT TO DEVELOPMENT MANAGEMENT COMMITTEE
15 September 2021

REFERENCE: HW/FUL/21/00330

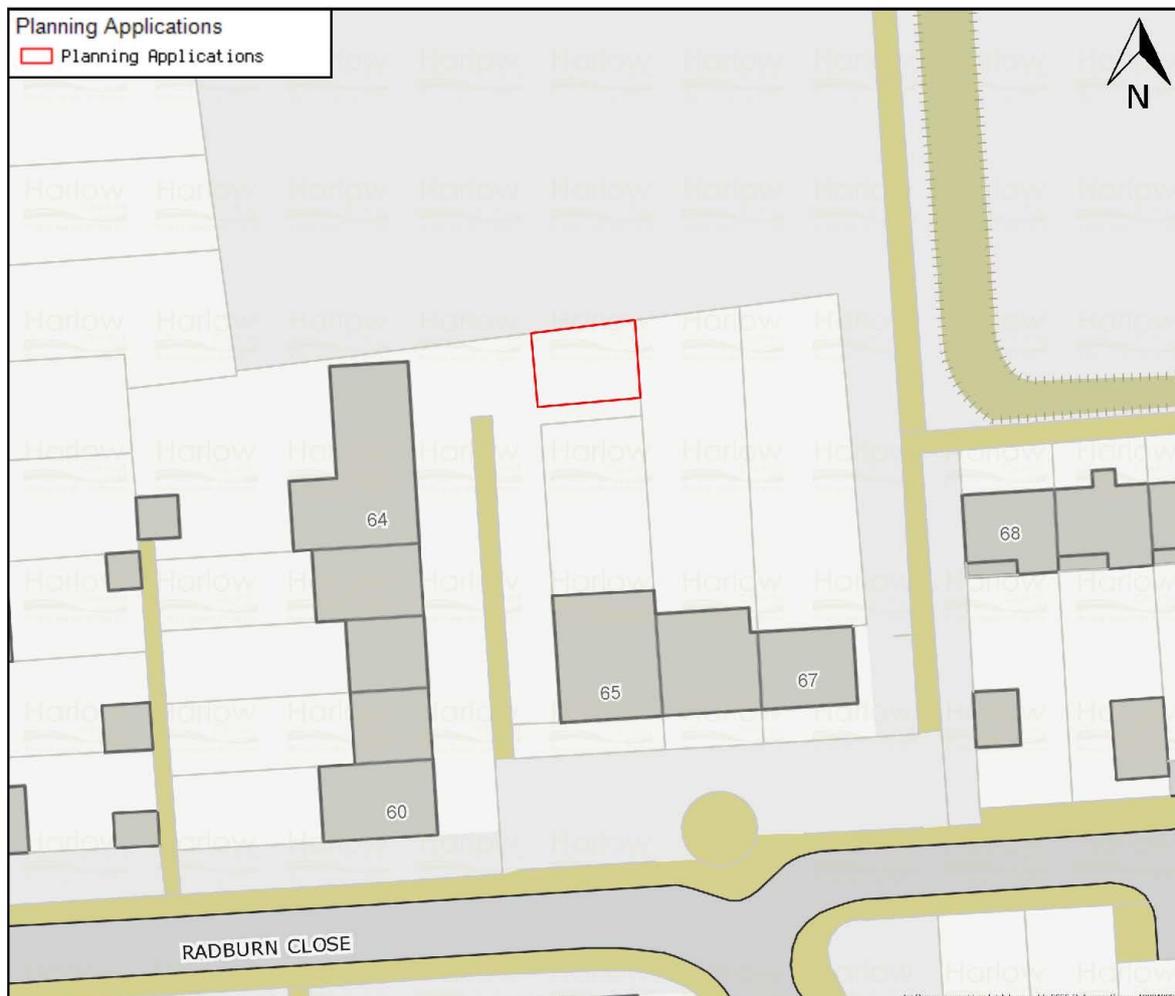
OFFICER: Nicholas Fu

APPLICANT: Mr Masoud Eskandarian

LOCATION: Land West Of 66 Radburn Close
Radburn Close
Harlow
Essex

PROPOSAL: Change of use of public land to private land for extension of the rear garden of 66 Radburn Close

LOCATION PLAN



REASON BROUGHT TO COMMITTEE:

More than two objections have been received which are contrary to the officer recommendation

Application Site and Surroundings

The application relates to a piece of land located on Radburn Close. It is a small patch of grass verge, measuring 60m² in size, at the end of a footpath which gives access to 60-64 Radburn Close. The site is located behind the rear garden of 65 Radburn Close and to the west of the rear garden of 66 Radburn Close. There is a paved path between the site and the rear garden fence of no.65, which gives access to the rear gates of no.65 and 66. The site is 15m away from the single storey rear extension of no.65, and 10m away from the front elevation of no.64. The north boundary of the site is a line of hedgerow, and beyond that is the green openspace of Radburn Playing Field.

The application site is not within a Conversation Area, and there is no Listed Building within the surrounding. There are no protected trees within the site.

Details of the Proposal

The current application seeks planning permission for the change of use of the land from public land to a private garden extension for 66 Radburn Close.

As a result of the proposal, 66 Radburn Close would have an L-shaped rear garden which hugs the no.65 to the east and north. It would be surrounded by a fence up to 2m in height. The path for accessing the rear gates of no.65 and 66 is not part of the application site and would therefore be retained.

The site is currently a piece of land owned by HDC which the applicant has agreed to purchase subject to planning permission being granted.

RELEVANT PLANNING HISTORY

There is no relevant planning history.

CONSULTATIONS

Internal and external Consultees

No Comment Received.

Neighbours and Additional Publicity

Number of Letters Sent: 4

Total Number of Representations Received: 4

Date Site Notice Expired: 9 July 2021

Date Press Notice Expired:

Summary of Representations Received

4 letters of objection have been received. They object the application for the following reasons:

- The proposal would detrimentally harm the character and appearance of the local area
- Significant harm on neighbour amenity such as overshadowing and privacy. This is particularly concerning if an outbuilding is later erected on this location
- Impacts on local and visiting wildlife
- The proposal would impede the use of the existing footpath
- The applicant does not take good care of his existing garden

- Other local residents have tried to purchase this land from the Council but got refused. This is unfair that the Council is now considering selling the land to another resident

These concerns are discussed in the relevant sections of the planning assessment.

PLANNING POLICY

The following policies of the Harlow Local Development Plan (2020) are relevant to this application:

- PL1: Design Principles for Development
- PL2: Amenity Principles for Development
- PL6: Other Open Spaces
- PL7: Trees and Hedgerows

PLANNING STANDARDS

National Planning Policy Framework (NPPF) (2021) - sets out the Government's key economic, social and environmental objectives and the planning policies to deliver them. These policies will provide local communities with the tools they need to energise their local economies, meet housing needs, plan for a low-carbon future and protect the environmental and cultural landscapes that they value. It seeks to free communities from unnecessarily prescriptive central government policies, empowering local councils to deliver innovative solutions that work for their local area.

Supplementary Planning Documents/Current Planning Guidance

- The Harlow Design Guide SPD (2011)
- Draft Harlow Design Guide Addendum Supplementary Planning Document (2021)
- Open Spaces, Sport and Recreation SPD (2007)
- The Harlow and Gilston Garden Town Design Guide (2018)
- Planning Practice Guidance (PPG)

Summary of Main Issues

Principle of Development

The application site relates to a piece of grassed area which does not fall within the Green Wedge or Green Fingers on the Local Plan Policies Map.

The application site is defined as "Other Open Spaces" and therefore Policy PL6 of the Harlow Local Development Plan (HLDP) applies. Other open spaces form part of the green space hierarchy which is fundamental to the character of Sir Frederic Gibberd's vision for Harlow. They also offer amenity and informal recreational spaces for local residents. Policy PL6 seeks to protect those other open spaces which make a positive contribution through their specific role or function, to the overall character and design of Harlow.

The Open Spaces, Sport and Recreation SPD refers *other open spaces* as "Internal Open Spaces", which is a term used in Policy NE7 of the then Adopted Replacement Harlow Local Plan (2006). The SPD states that internal open space should have a genuinely usable role and function. Therefore, small areas of landscaping such as roadside verges, other narrow incidental areas of land and structural landscape strips, should not be counted as functional internal open spaces.

Principle DG25 of the Harlow Design Guide SPD identifies “Local Open Spaces” as an important character to the district. Good quality local open spaces should be functional and appealing for potential users, such as for leisure and recreational uses. They should be overlooked by development to provide natural surveillance. Features such as landscaping, street furniture and play facilities would enhance the appeal and role of local open spaces.

Whether it is “Other Open Space”, “Internal Open Space” or “Local Open Space”, the general theme is that these unspecific open spaces should be of reasonable size and quality to have a specific role or function which would contribute to the amenity of the local residents.

The application site relates to a patch of grassed area located to the end of a footpath. It is enclosed by rear gardens of nearby properties on two sides, thereby hidden away from the wider public view. Although passive surveillance is provided by the front elevation of 64 Radburn Close, the application site has poor accessibility to be functional and appealing. This patch of grass is 60m² in size with no furniture and equipment that could provide a genuinely usable function. Moreover, the application site is adjacent the Radburn Playing Field and Lutton Common, which provide high quality and much appealing leisure and recreation locations for the local residents.

It is therefore considered that application site, by virtue of its location, size and design, fails to demonstrate a specific role or function which would contribute positively to the character of the area and the amenities of local residents. Therefore, the loss of this space would not comprise the landscape character, openness and urban design principles of the town, and would have limited impact on the overall local amenity and recreation spaces for Radburn Residents. There would be no demonstrable harm to the open spaces hierarchy fundamental to the character of Harlow.

Furthermore, the Council’s Street Scene Manager confirms that there were reports of dumping rubbish and landscape maintenance issues in the past. It is considered that the proposal to enclose this area would also provide added benefit on preventing these undesirable problems.

It is considered that the proposal would not be contrary to Policy PL6 of the HLDP, the Open Spaces, Sport and Recreation SPD, and Principle DG25 of the Harlow Design Guide SPD.

Visual Amenity

The proposal relates to the material change of use of the application site. There is no operational development proposed, except for the erection of a boundary fence.

The proposed boundary fence on the west side would follow the existing fence line along the footpath, which is considered to be in keeping with the character and appearance of the locality.

The application site includes a line of hedgerow facing the green openspace of the Radburn Playing Field, providing a soft landscaping feature. The applicant does not indicate whether this hedgerow would be removed, but the provisional land sale agreement between the Council and the applicant suggests that the existing hedge should be retained and maintained. The applicant has confirmed that they would adhere to this requirement.

Notwithstanding this, the block of three-dwellinghouse terrace (i.e. 65-67 Radburn Close) acts as a backdrop to the application site when viewing from the playing field. A close-board boundary fence for the existing rear gardens of no.66 and 67 is clearly visible on the playing field, which emphasises the residential character in this location. Therefore, even in the event when the hedgerow is replaced by a boundary fence, the new fence would be viewed against

the existing fence for no.66 and 67. The impact on the character and appearance of the wider area would therefore be acceptable.

It is therefore not considered reasonable to attach a condition to retain the existing hedges. Nevertheless, for the interest of character and appearance of the area, a condition requiring the full details of the boundary treatment and design of the fence is recommended.

Landscaping and Wildlife

There is a group of trees along the western boundary of Radburn Playing Field protected by a TPO. This group of trees stretches from the side garden of 64 Radburn Close to Commonside Road to the north. Two trees within the rear garden of no.67 are also protected a TPO. There is, nevertheless, no TPO tree within the application site.

Some neighbours mentioned that the application site facilitates local and visiting wildlife. While the application is a grassed area with overgrowth vegetation, it is surrounded by other residential properties. The enclosure of this piece of public land to private garden does not necessarily mean the loss of local ecology, as it is still common to find wildlife within garden a regular of family dwelling. Moreover, to the rear of the site is a wider green open space with other protected and unprotected trees within the surrounding area, which provide more significant wildlife habitat value. It is therefore considered that the sighting of animals within the application site would not be sufficient to refuse the application in this instance.

Neighbour Amenity

Policy PL2 of the HLDP and the Harlow Design Guide aim to ensure developments do not adversely affect adjacent residents, taking into consideration impacts on access to daylight and sunlight, overshadowing, privacy and overlooking.

The nature change of use from public land to private garden space would not give rise to any material neighbour amenity impacts such as overshadowing or privacy. The quality, height and design of boundary fence would be addressed with the abovementioned boundary treatment condition.

However, the resulting rear garden of no.66 would hug its neighbour at no.66 to the side and rear. The application site is also only 10m away from the frontage of no.64. If an outbuilding is to be erected in this location, there would be potential overbearing impacts to the neighbours and creating a sense of enclosure.

In response to this, the applicant has stated that he has no intend to erect a building on the site. The provisional land sale agreement also indicates the site should not be built upon. Nevertheless, to ensure sufficient planning control, it is recommended that a condition should be attached to ensure no building should be erected on the application site.

Other Issues

Some neighbours are concerned about the applicant not maintaining his own rear garden to the high quality and standard. However, this is the living style and behaviour of an occupant within the curtilage of a private property, and would not be a material planning consideration.

A neighbour has indicated that he/she has attempted to approach the Council in the past to purchase this piece of land but got refused, and queries the fairness of the process as it appears the Council is now going to sell the same piece of land to another resident. The issue on land sale is a separate procedure from planning control, and therefore would not a material

consideration for this application. Nonetheless, the Planning Department can confirm no other planning application was received to turn this piece of land for private use.

A neighbour is concerned about the existing path to access their rear garden, as it is sandwiched between the rear boundary fence of no.65 and the application site. This path is not part of the application site and would therefore be retained.

Equalities

Section 149 of the Equality Act 2010, which came into force on 5th April 2011, imposes important duties on public authorities in the exercise of their functions, including a duty to have regard to the need to:

“(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”

For the purposes of this obligation the term “protected characteristic” includes:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

The above duties require an authority to demonstrate that any decision it makes is reached “in a fair, transparent and accountable way, considering the needs and the rights of different members of the community and the duty applies to a local planning authority when determining a planning application.

Officers consider that the application does not give rise to any concerns in respect of the above.

CONCLUSIONS

The application is to turn a piece of public green space into part of a private garden. Although the site could be defined as an “Other Open Spaces” under Policy PL6 of the HLDP (and similar provisions in the Open Space SPD and Design Guide SPD, but using different terminologies), it is considered that the application site does not demonstrate a sufficient quality, scale, function and role to be worthy of preservation for public use. It is therefore considered that loss of this piece of public land would not result in any detrimental harm on the local landscape character, leisure and recreation provision and open space hierarchy.

As a result of the proposal, the dwelling 67 Radburn Close would have an L-shaped rear garden which wraps the neighbour at no. 66 to the side and rear. However, this is considered on balance would not demonstrate sufficient level of harm to warrant a refusal. Conditions ensuring appropriate boundary treatment and ensuring no building to be erected would protect the character and appearance of the surrounding area and neighbour amenity.

On balance, it is considered that the proposed development would be acceptable and comply with Policies PL1, PL2, PL6 and PL7 of the Harlow Local Development Plan, the Open Spaces, Sport and Recreation SPD (2007), and the Harlow Design Guide SPD.

RECOMMENDATION

That Committee resolve to: GRANT PLANNING PERMISSION subject to the following conditions:

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
REASON: In order to comply with Section 91(1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 Prior to the commencement of the development hereby permitted, full details of any boundary treatments to be erected shall be submitted to and approval in writing by the Local Planning Authority. The design and materials of such enclosure shall be in keeping with the character and appearance of the locality. The maximum height of such enclosure should be no more than 2m in height, unless it is expressed in the form of vegetation. The development shall thereafter be carried out in accordance with the approved details.
REASON: To protect the character and appearance of the surrounding area and neighbour amenities, in accordance with Policies PL1 and PL2 of the Harlow Local Development Plan, December 2020.

- 3 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), any alterations and outbuildings permitted by Schedule 2, Part 1, Class E shall not be undertaken without apply for permission from the Local Planning Authority.
REASON: To enable the Local Planning Authority to retain adequate control over such extensions or alterations to protect local amenity and the living conditions of neighbouring residents, in accordance with Policies PL1 and PL2 of the Harlow Local Development Plan, December 2020.

- 4 The development hereby permitted shall be carried out in accordance with the approved plans as shown listed in the table below.

REASON: For the avoidance of doubt and in the interests of proper planning.

Plan Reference	Version No.	Plan Type	Date Received
GIM4607-020	--	Location Plan	08.06.2021

INFORMATIVE CLAUSES

1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.